

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

2018 MAY 22 AM 11:17

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BY LAW  
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Shaun Hill, Alex Peltz, and Mike Ingrassia, )  
Plaintiffs, )  
v. )  
Tired Hands Brewing Company, Jean Broillet, )  
and Julie Foster, )  
Defendants. )  
Docket No. 2:18-cv-86  
**Removed from Vermont Superior  
Court, Orleans Unit, Civil Division**

**DEFENDANTS' NOTICE OF REMOVAL**

(28 U.S.C. § 1441)

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendants Tired Hands Brewing Company, LLC (“Tired Hands”), Jean Broillet, and Julie Foster (collectively “Defendants”) hereby file this Notice of Removal to the United States District Court for the District of Vermont. As grounds for removal, Defendants state as follows:

1. Tired Hands, Jean Broillet, and Julie Foster are defendants in a civil action entitled Shaun Hill, Alex Peltz, and Mike Ingrassia v. Tired Hands Brewing Company, Jean Broillet, and Julie Foster, Docket No. 75-4-18 Oscv, commenced by Plaintiffs Shaun Hill, Alex Peltz, and Mike Ingrassia (collectively, “Plaintiffs”) in Vermont Superior Court, Orleans Unit, Civil Division (the “State Court Action”).

2. Plaintiffs filed the State Court Action on April 19, 2018. Service was attempted on May 2, 2018, on which date a copy of the Complaint and Summons was hand-delivered to an employee of Defendant Tired Hands. A copy of these papers is attached as Exhibit A pursuant to 28 U.S.C. § 1446(a).

3. This Notice of Removal is being filed within thirty (30) days of Defendants' receipt of the Complaint and is therefore timely pursuant to 28 U.S.C. § 1446(b)(1). Defendants do not concede that service was proper.

4. Count I of Plaintiffs' Complaint alleges that Defendants are liable for federal securities fraud pursuant to Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a) (the "1933 Act"). Compl. ¶¶ 16-21 ("Count I").

5. The Second Circuit has expressly held that there is no private right of action under Section 17(a) of the 1933 Act. Finkel v. Stratton Corp., 962 F.2d 169, 175 (2d Cir. 1992).

6. Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) (the "1934 Exchange Act") is the antifraud provision of the 1934 Exchange Act. Distinct from the 1933 Act, a private right of action exists for violations of Section 10(b) of the 1934 Exchange Act. Superintendent of Ins. of State of N.Y. v. Bankers Life & Cas. Co., 404 U.S. 6, 13 n.9 (1971).

7. Because the antifraud provisions of the 1933 Act and the 1934 Exchange Act are virtually identical, and because there is no private right of action for a violation of Section 17(a) of the 1933 Act, Defendants construe Count I of the Complaint as pled under Section 10(b) of the 1934 Exchange Act.

8. The district courts of the United States have exclusive jurisdiction over violations of Section 10(b) of the 1934 Exchange Act. 15 U.S.C. § 78aa(a).

9. Because this action therefore arises under the 1934 Exchange Act, original and exclusive jurisdiction lies in this Court under 28 U.S.C. § 1331 and 15 U.S.C. § 78aa(a).

10. A copy of this Notice will be promptly filed with the Clerk of the Vermont Superior Court, Orleans Unit, which will effect removal. 28 U.S.C. § 1446(d).

May 22, 2018

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TIRED HANDS BREWING COMPANY,  
JEAN BROILLET, AND JULIE FOSTER.